

MICHIGAN DEPARTMENT OF COMMUNITY HEALTH

CERTIFICATE OF NEED PROGRAM

ANNUAL ACTIVITY REPORT

***October 2004 Through September 2005
(FY2005)***

***Michigan Department of
Community Health***



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<http://www.michigan.gov/con>

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EXECUTIVE SUMMARY

One of the Michigan Department of Community Health's ("MDCH" or "Department") duties under Part 222 of the Public Health Code, MCL 333.22221(b), is to report to the Commission annually on the Department's performance under this Part. This is the Department's 17th report to the Commission and covers the period beginning October 1, 2004 through September 30, 2005 ("FY2005"). Data contained in this report may differ from prior reports due to updates subsequent to each report's publishing date.

Historical Overview

In 1974, Congress passed the National Health Planning and Resources Development Act (PL 93-641) that encouraged states to establish a CON program as a vehicle for health services planning. The law was repealed in 1986. Michigan's law was not repealed and, during the 1980s, it became evident that the expectations and decisions of Michigan's CON program were unclear and unpredictable to many applicants. As a result, the CON Reform Act of 1988 was passed that created a systematic standards development process and reduced the number of services requiring a CON. Since these reforms, the number of CON application denials and appeals has declined.

Administration

The MDCH's Certificate of Need Section ("Section") provides support for the CON Commission ("Commission") and its standards advisory committees. The Commission is responsible for setting review standards and designating the list of covered services. The Commission may utilize standard advisory committees to assist in the development of proposed CON review standards, which consists of a 2/3 majority of experts in the subject area. Further, the Commission, if determined necessary, may submit a request to the Department to engage the services of private consultants or request the Department to contract with any private organization for professional and technical assistance and advice or other services to assist the Commission in carrying out its duties and functions.

The CON Section also manages and reviews all incoming letters of intent, CON applications, and subsequent amendments, if applicable. These functions include determining if CON is necessary and providing the necessary application materials.

During FY2005, the Section staff worked to develop an online application and management information system. The first phase of the system to be launched early in 2006 will allow applicants to file online Letters of Intent.

Certificate of Need Required

In accordance with MCL 333.22209, a person or entity is required to obtain a certificate of need, unless elsewhere specified in Part 222, for any of the following activities:

- (a) Acquire an existing health facility or begin operation of a health facility at a site that is not currently licensed for that type of health facility.
- (b) Make a change in the bed capacity of a health facility.
- (c) Initiate, replace, or expand a covered clinical service.
- (d) Make a covered capital expenditure.

CON Application Process

To apply for a CON, the following steps must be completed:

- Letter of Intent filed and processed prior to submission of an application,
- CON Application filed on appropriate date as defined in the CON Administrative Rules,
- Application reviewed by the CON Section,
- Issuance of Proposed Decision by the Bureau in which the CON Section resides,
 - Appeal if applicant disagrees with the Proposed Decision issued,
- Issuance of the Final Decision by the MDCH Director.

Types of Reviews

There are three types of CON review: nonsubstantive, substantive individual, and comparative (involving competitive applications for limited resources by two or more applicants). The Administrative Rules for the CON program establish time lines by which the Department must issue a proposed decision on each CON application. The proposed decision for a nonsubstantive review must be issued within 45 days of the date the review cycle begins, 120 days for substantive individual, and 150 days for comparative reviews.

In FY2005, there were 127 applications for nonsubstantive review, 162 for substantive individual review and 13 for comparative review, for a total of 302 applications received. Fifteen (15) applications were withdrawn prior to a proposed decision being issued. These applications are usually withdrawn because the applicant cannot demonstrate the need requirements set forth in the applicable standards.

Proposed Decisions

In FY2005, 199 applications for CON review were approved, 88 with conditions and 5 disapproved. Of the 5 proposed decisions for disapproval, 2 were approved upon appeal and final decision or reconsideration, 2 were confirmed as disapprovals, and 1 application was withdrawn.

Final Decisions

In FY2005, 292 applications for CON review were approved, including emergency CON approvals. Eighty-eight (88) final decisions included conditions, while six (6) were disapproved.

Report

The following report presents information about the nature of these CON applications and decisions. Note that the data presented represents some applications that were carried over from last fiscal year and others that have been carried over into next fiscal year.

HISTORICAL OVERVIEW OF MICHIGAN'S CERTIFICATE OF NEED PROGRAM

In 1974, Congress passed the National Health Planning and Resources Development Act (PL 93-641) including funding incentives that encouraged states to establish a CON program. The purpose of the act was to facilitate recommendations for a national health planning policy. It encouraged state planning for health services, manpower, and facilities. And, it authorized financial assistance for the development of resources to implement that policy. Congress repealed PL 93-641 and certificate of need in 1986. At that time, federal funding of the program ceased and states became totally responsible for the cost of maintaining CON.

Michigan has had a state CON program since the early 1970s. Over the years, the law has been amended several times. The goal of the program is to balance cost, quality, and access issues and ensure that only needed services are developed in Michigan. However, the program's ability to meet these goals was significantly diluted by the fact that most application denials were overturned in the courts. In order to address this, Michigan's CON Reform Act of 1988 was passed to develop a clear, systematic standards development process and reduce the number of services requiring a CON.

Prior to the 1988 CON Reform Act, the Department found that the program was not serving the needs of the state optimally. It became clear that many found the process to be excessively unclear and unpredictable. To strengthen CON, the 1988 Act established a specific process for developing and approving standards used in making CON decisions. The CON review standards establish how the need for a proposed project must be demonstrated. Applicants know before filing an application what specific requirements must be met.

The Act also created the CON Commission. The CON Commission, whose membership is appointed by the Governor, is responsible for approving CON review standards. The Commission also has the authority to revise the list of covered clinical services subject to CON review. However, the CON Section inside the Department is responsible for day-to-day operations of the program, including making decisions on CON applications consistent with the review standards.

In 1993, additional amendments to the Act required ad hoc committees to be appointed by the Commission to provide expert assistance in the formation of the review standards. And again in 2002, amendments expanded the CON Commission to 11 members, eliminated ad hoc committees, and established the use of standard advisory committees or other private consultants/organizations for professional and technical assistance.

The CON program is now more predictable so that applicants reasonably can assess, before filing an application, whether a project will be approved. As a result, there are far fewer appeals of Department decisions. Moreover, the 1988 amendments appear to have reduced the number of unnecessary applications, i.e., those involving projects for which a need cannot be demonstrated.

The standards development process now provides a public forum for consideration of cost, quality, and access and involves organizations representing purchasers, payers, providers, consumers, and experts in the subject matter. The process has resulted in CON review standards that are legally enforceable, while assuring that standards can be revised promptly in response to the changing health-care environment.

ADMINISTRATION OF THE CERTIFICATE OF NEED PROGRAM

Certificate of Need Responsibilities

Certificate of Need Commission Responsibilities: The Commission is an eleven-member body. The Commission, appointed by the Governor and confirmed by the Senate, is responsible for approving CON review standards used by the Department to make decisions on individual CON applications. The Commission also has the authority to revise the list of covered clinical services subject to CON review. Appendix I is a list of the CON commissioners for FY2005.

Pursuant to PA 619 of 2002, effective March 31, 2003, Standards Advisory Committees (“SAC”) may be appointed by and report to the CON Commission. The SACs advise the Commission regarding creation of, or revisions to, the standards. The committees are composed of a 2/3 majority of experts in the subject matter and include representatives of organizations of health-care providers, professionals, purchasers, consumers, and payers.

Certificate of Need Section Responsibilities: The CON Section provides professional and support staff assistance to the Commission and its committees in the development of new and revised standards. Staff support includes researching issues related to specific standards, preparing draft standards, and performing functions related to both Commission and committee meetings.

The CON Section has operational responsibility for the program. In addition to providing staffing to the Commission, Section staff members provide assistance to applicants prior to and throughout the CON process.

CON staff are responsible for reviewing all letters of intent (“LOI”) and CON applications as prescribed by the Administrative Rules. Based on the LOI, staff determines if a proposed project requires a CON. If a CON is required, staff identifies the appropriate application forms to the applicant for completion and submission to the Department. The application review process includes the assessment of each application for compliance with all applicable statutory requirements and CON Review Standards and preparation of a report documenting the analysis and findings.

In addition to the application reviews, the Section also reviews requests for amendments to approved CONs as allowed by the Rules. Amendment requests involve a variety of circumstances, including changes in how an approved project is financed and authorization for cost overruns. The Rules allow actual project costs to exceed approved costs by a specified amount due to the difficulty in estimating construction and other capital costs at the time an application is filed. Currently, no fee is charged for processing amendments.

During FY2005, the Section staff worked to develop an online application and management information system. The first phase of the system to be launched early in 2006 will allow applicants to file online Letters of Intent.

In addition, the Section provides the Michigan State Hospital Finance Authority (“MSHFA”) with information when hospitals request financing through MSHFA bond issues and Hospital Equipment Loan Program (“HELP”) loans. This involves advising MSHFA on whether a CON is required for the items that will be bond financed and if a required CON has been obtained. During FY2005, the Section’s financial analyst reviewed approximately 27 bond requests.

CERTIFICATE OF NEED APPLICATION PROCESS

The following discussion briefly describes the steps an applicant follows in order to apply for a Certificate of Need.

Letter of Intent. An applicant must file a letter of intent (LOI) with the Department and, if applicable, the regional CON review agency. The CON Section identifies for an applicant all the necessary application forms required based on the information contained in the LOI. All CON-related forms are available on the MDCH Web site for download by an applicant.

Application. An applicant files the completed application forms with the Department and, if applicable, the regional CON review agency on a designated application date. The Section reviews an application to determine if it is complete. If not complete, additional information is requested. For nonsubstantive reviews, the application is deemed complete, or received, when the additional information has been provided. For substantive individual and comparative reviews in which additional information is requested, the application is deemed complete or received the first working day of the month following the receipt of the application. For nonsubstantive and substantive reviews, the review cycle starts after an application is deemed complete or received.

Review Types and Time Frames. There are three review types: nonsubstantive, substantive individual, and comparative. Nonsubstantive reviews that involve projects such as certain equipment replacements and changes in ownership do not require a full review. Substantive individual reviews involve projects that require a full review but are not subject to comparative review as specified in the applicable CON Review Standards. Comparative reviews involve situations where two or more applicants are competing for a resource limited by a CON Review Standard, such as hospital or nursing home beds. The maximum review time frames for each review type, from the date an application is deemed complete or received until a proposed decision is issued, are: 45 days for nonsubstantive, 120 for substantive individual, and 150 days for comparative reviews. The comparative review time frame includes an additional 30-day period for determining if a comparative review is necessary. Whenever this determination is made, the review cycle begins for comparative reviews.

Review Process. The Section reviews the application. Each application is reviewed separately unless part of a comparative review. Each application review includes a program and finance report documenting the Department's analysis and findings of compliance with the statutory review criteria, as set forth in Section 22225 of the CON law and the CON Review Standards.

Proposed Decision. The Bureau in which the CON Section resides issues a proposed decision to the CON applicant within the required time frame. This decision is binding unless reversed by the Department Director or appealed by the applicant. The applicant must file an appeal within 15 days of receipt of the proposed decision. In the case of a comparative review, a single decision is issued for all applications in the same comparative group.

Acceptance and Appeal of Decision. If the proposed decision is an approval, the final decision must be signed by the Director within five business days. If a hearing is requested, the final decision is not issued by the Director until completion of the hearing. If no hearing is requested, the Director issues the final decision in accordance with Part 222.

CERTIFICATE OF NEED APPLICATION PROCESS

The CON Administrative Rules, specifically Rule 9201, provides that the CON Section must process Letters of Intent (LOI) within 15 days of receipt. Processing an LOI includes entering data in the CON program's management information system, verifying proof of documentation to do business in Michigan and ownership, determining the type of review for the proposed project, and notifying the applicant of applicable application forms to be completed.

Table 1 provides an overview of the number of Letters of Intent received and processed by the Section in accordance with the above-referenced Rule.

TABLE 1					
LETTERS OF INTENT RECEIVED AND PROCESSED WITHIN 15 DAYS					
FY2001-FY2005					
	FY2001	FY2002	FY2003	FY2004	FY2005
LOIs Received	459	447	464	608	536
Processed within 15 Days	N/A	N/A	N/A	N/A	532

Note: FY2001-04 not available. Tracking system to measure compliance for this Rule developed in 2005.

TYPES OF CERTIFICATE OF NEED APPLICATION REVIEWS

The Administrative Rules also establish three types of project reviews: nonsubstantive, substantive, and comparative. As discussed in the previous section, the Rules specify the time frames by which the Bureau must issue its proposed decision related to a CON application. The time allowed varies based on the type of review.

Nonsubstantive

Nonsubstantive reviews involve projects that are subject to CON review but do not warrant a full review. The following describes some of the types of projects that potentially would be eligible for review on a nonsubstantive basis:

- Acquire an existing health facility;
- Replace and relocate existing health facility within the replacement zone and below the covered capital expenditure;
- Add a host site to an existing mobile network/route that does not require data commitments;
- Replace or upgrade a covered clinical equipment; or
- Acquire or relocate an existing freestanding covered clinical service.

The Rules allow the Bureau up to 45 days from the date an application is deemed complete to issue a proposed decision. Reviewing acquisitions and equipment replacements on a nonsubstantive basis allows an applicant to receive a decision in a timely fashion while still being required to meet current CON requirements, including quality assurance standards.

Substantive Individual

Substantive individual review projects require a full review but are not subject to comparative review and not eligible for nonsubstantive review. An example of a project reviewed on a substantive individual basis is the initiation of a covered clinical service such as computed tomography (CT) scanner services. The Bureau must issue its proposed decision within 120 days of the date a substantive individual application is deemed complete or received.

Comparative

Comparative reviews involve situations where two or more applications are competing for a limited resource such as hospital and nursing home beds. A proposed decision for a comparative review project must be issued by the Bureau no later than 120 days after the review cycle begins. The review cycle begins when the determination is made that the project requires a comparative review. According to the Rules, the Department has the additional 30 days to determine if, in aggregate, all of the applications submitted on a comparative window date exceed the current need. A comparative window date is one of the three dates during the year on which projects potentially subject to comparative review must be filed. Those dates are February 1, June 1, and October 1 (or the first working day following any of those dates).

Section 22229 established the services that were subject to comparative review. Pursuant to Part 222, the CON Commission may, and has, changed the list of services reviewed on a comparative basis.

Figure 1 delineates services subject to comparative review in FY2005.

FIGURE 1: Services Subject to Comparative Review	
Neonatal Intensive Care	Nursing Home Beds for Special Population Groups
Hospital Beds	Psychiatric Beds
Hospital Beds (HIV)	Transplantations (excluding Pancreas)
Nursing Home Beds	

Table 2 shows the number of applications received by the Department by review type.

TABLE 2 APPLICATIONS RECEIVED BY REVIEW TYPE FY2001-FY2005					
	FY2001	FY2002	FY2003	FY2004	FY2005
Nonsubstantive	79	82	90	101	127
Substantive	131	145	188	237	162
Comparative	37	3	2	10	13
TOTALS	247	230	280	348	302

Table 3 provides a summary of applications received by the Section and its review to determine if an application is complete in accordance with Rule 9201. The Rule requires the Section to determine if additional information is needed within 15 days of receipt of an application. Processing of applications includes: updating the CON management information system, verifying submission of required forms, and determining if other information is needed in response to applicable Statutes and Standards.

TABLE 3 APPLICATIONS RECEIVED AND PROCESSED WITHIN 15 DAYS FY2005	
	FY2005
Applications Received	302
Processed within 15 Days	302

Note: Tracking system to measure compliance for this Rule developed in 2005.

Table 4 provides the number and percent of applications incomplete when submitted to the Department. Prior to reviewing an application, the Section examines each application to determine if all of the necessary information requested in the Letter of Intent has been received, as well as other information needed to comply with applicable statutory requirements. This phase of the review process involves 30 days: 15 days for the Section to request additional information and 15 days for the applicant to respond to the request.

TABLE 4 INCOMPLETE APPLICATIONS FY2001 - FY2005					
ALL APPLICATIONS	FY2001	FY2002	FY2003	FY2004	FY2005
Complete	19	61	105	110	38
Incomplete	228	169	175	238	264
Percent Incomplete	92%	74%	63%	68%	87%

Table 5 provides an overview of the average number of days taken by the CON Section to complete reviews by type.

TABLE 5 AVERAGE NUMBER OF DAYS IN REVIEW CYCLE BY REVIEW TYPE FY2001-FY2005					
	FY2001	FY2002	FY2003	FY2004	FY2005
	Avg. Days	Avg. Days	Avg. Days	Avg. Days	Avg. Days
Nonsubstantive	29	33	39	40	35
Substantive	111	116	116	117	112
Comparative	120	145	149	169	146

PROPOSED DECISIONS

Part 222 establishes a two-step decision-making process for CON applications that includes both a proposed decision and a final decision. After an application is deemed complete and reviewed by the CON Section, a proposed decision is issued to the applicant and the MDCH Director according to the time frames established in the Rules.

Table 6 As described above, the Section is required to issue Proposed Decisions within applicable time frames set forth in the Administrative Rules 325.9206 and 325.9207: 45 days for nonsubstantive, 120 days for substantive, and 150 days for comparative reviews.

TABLE 6 PROPOSED DECISIONS ISSUED FY2005						
	Nonsubstantive		Substantive		Comparative	
	Issued	Within 45 days	Issued	Within 120 days	Issued	Within 150 days
FY2005	104	99	169	167	10	9

Note: Tracking system to measure compliance for this Rule developed in 2005.

Table 7 compares the number of proposed decisions by decision type made.

TABLE 7 COMPARISON OF PROPOSED DECISIONS BY DECISION TYPE FY2001 - FY2005					
	Approved	Approved w/ Conditions	Disapproved	Percent Disapproved	TOTAL
FY2001	178	5	27	19%	210
FY2002	203	8	48	3%	259
FY2003	213	24	8	5%	245
FY2004	211	82	17	5%	310
FY2005	199	88	5	2%	292

If a proposed decision is a disapproval, an applicant may request an administrative hearing that suspends the time frame for issuing a final decision. After a proposed disapproval is issued, an applicant may also request that the Department consider new information. The Administrative Rules allow an applicant to submit new information in response to the areas of noncompliance identified by the Department's analysis of an application and the applicable statutory requirements to satisfy the requirements for approval.

FINAL DECISIONS

The Director issues a final decision on a CON application following either a proposed decision or the completion of a hearing, if requested, on a proposed decision. Pursuant to Section 22231(1) of the Public Health Code, the Director may issue a decision to approve an application, disapprove an application, or approve an application with conditions or stipulations.

If an application is approved with conditions, the conditions must be explicit and relate to the proposed project. In addition, the conditions must specify a time period within which the conditions shall be met, and that time period cannot exceed one year after the date the decision is rendered. If approved with stipulations, the requirements must be germane to the proposed project and agreed to by the applicant.

This section of the report provides a series of tables summarizing final decisions for each of the review thresholds for which a CON is required. It should be noted that some tables will not equal other tables, as many applications fall into more than one category.

Table 8 compares the number of applications submitted to the Department and the number of final decisions issued.

TABLE 8 APPLICATIONS SUBMITTED FOR REVIEW AND FINAL DECISIONS FY2001 - FY2005					
	FY2001	FY2002	FY2003	FY2004	FY2005
Applications Submitted	247	230	280	348	302
Final Decisions	198	224	250	308	294

Note: Not all applications received in a given year receive a decision in that same year.

Figures 2 illustrate final decisions issued by project review types.

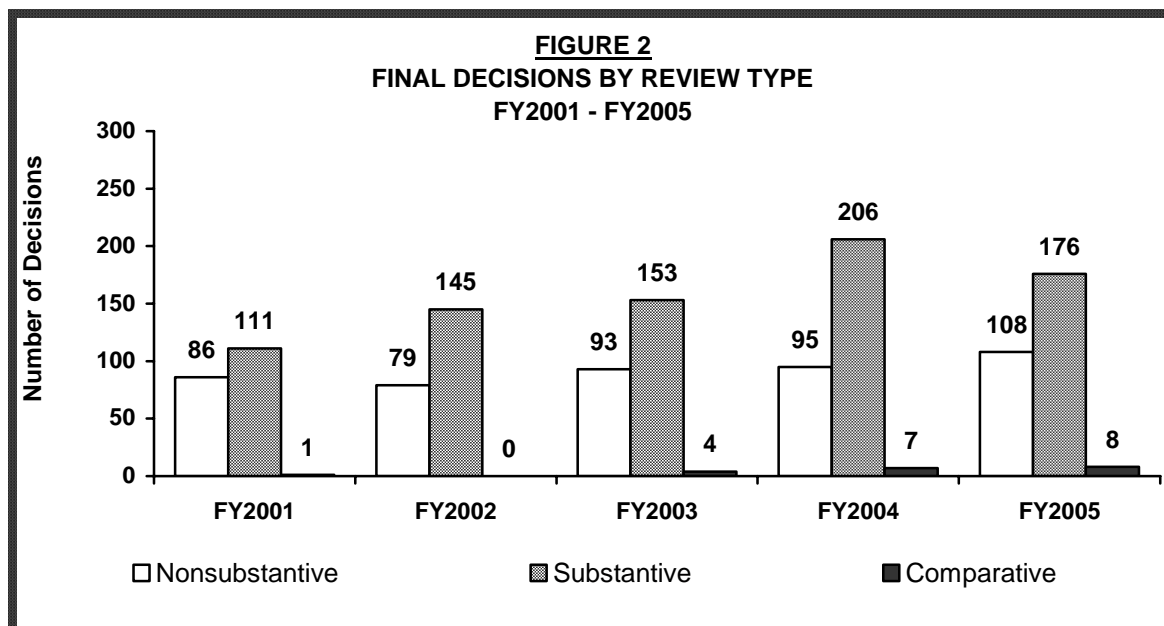


Table 9 summarizes final decisions by review categories defined in MCL 333.22209(1) and as summarized below:

Acquire, Begin Operation of, or Replace a Health Facility

Under Part 222, a health facility is defined as a general hospital, a hospital long-term care unit, a psychiatric hospital or unit, a nursing home, a freestanding surgical outpatient facility (FSOF), and a health maintenance organization under limited circumstances. This category includes projects to construct or replace a health facility, as well as projects involving the acquisition of an existing health facility through purchase or lease.

Change in Bed Capacity

This category includes projects to increase in the number of licensed hospital, nursing home, or psychiatric beds; change the licensed use; and relocate existing licensed beds from one geographic location to another without an increase in the total number of beds.

Covered Clinical Services

This category includes projects to initiate, replace, or expand a covered clinical service: neonatal intensive care services, open heart surgery, extrarenal organ transplantation, extracorporeal shock wave lithotripsy, megavoltage radiation therapy, positron emission tomography, surgical services, cardiac catheterization, magnetic resonance imager services, computerized tomography scanner services, and air ambulance services.

Covered Capital Expenditures

This category includes capital expenditure project in a clinical area of a licensed health facility that is equal to or above the threshold set forth in Part 222. Typical examples of covered capital expenditure projects include construction, renovation, or the addition of space to accommodate increases in patient treatment or care areas not already covered. As of January 2005, the covered capital expenditure threshold was \$2.655 million. The threshold is updated every January in accordance with Part 222.

TABLE 9
FINAL DECISIONS ACTIVITY CATEGORY
FY2001 - FY2005

Approved	FY2001	FY2002	FY2003	FY2004	FY2005
Acquire, Begin, or Replace a Health Facility	35	46	41	75	54
Change in Bed Capacity	11	21	23	29	18
Covered Clinical Services	129	147	209	211	222
Covered Capital Expenditures	23	40	36	30	23
Disapproved					
Acquire, Begin, or Replace a Health Facility	0	2	1	2	1
Change in Bed Capacity	2	1	1	2	2
Covered Clinical Services	10	5	0	3	3
Covered Capital Expenditures	1	1	0	1	1

Note: Totals above may not match Final Decision totals because applications may include multiple categories.

Table 10 provides a comparison of the total number of final decisions and total project costs by decision type.

TABLE 10
COMPARISON OF FINAL DECISIONS BY DECISION TYPE
FY2001 - FY2005

	Approved	Approved With Conditions	Disapproved	TOTALS
Number of Final Decisions				
FY2001	182	4	12	198
FY2002	210	6	8	224
FY2003	240	25	3	268
FY2004	221	81	6	308
FY2005	200	88	6	294
Total Project Costs				
FY2001	\$974,220,693	\$3,205,149	\$9,316,888	\$986,742,730
FY2002	\$1,030,698,218	\$11,898,680	\$22,141,586	\$1,064,738,484
FY2003	\$992,397,822	\$77,078,656	\$700,000	\$1,070,176,478
FY2004	\$933,587,233	\$715,077,786	\$28,681,746	\$1,677,346,765
FY2005	\$872,652,430	\$312,589,694	\$19,442,339	\$1,204,684,463

EMERGENCY CERTIFICATES OF NEED

Table 11 shows the number of emergency CONs issued. The Department is authorized by Section 22235 of the Public Health Code to issue emergency CONs when applicable. Rule 9227 permits up to 10 working days to determine if an emergency application is eligible for review under Section 22235.

TABLE 11
EMERGENCY CON DECISIONS ISSUED
FY2001 - FY2005

	FY2001	FY2002	FY2003	FY2004	FY2005
Emergency CONs Issued	1	1	2	1	9
Issued within 10 working days	N/A	N/A	N/A	N/A	9

Note: FY2001-04 not available. Tracking system to measure compliance for this Rule developed in 2005.

AMENDMENTS

The Rules allow an applicant to request to amend an approved CON for projects less than 100 percent complete. The Department has the authority to decide when an amendment is appropriate or when the proposed change is significant enough to require a separate application. Typical reasons for requesting amendments to approved CONs include:

Cost overruns. The Rules allow the actual cost of a project to exceed the approved amount by 15 percent of the first \$1 million and 10 percent of all costs over \$1 million. Fluctuations in construction costs can cause projects to exceed approved amounts.

Changes in the scope of a project. An example is the addition of construction or renovation required by regulatory agencies to correct existing code violations that an applicant did not anticipate in planning the project.

Changes in financing. Applicants may decide to pursue a financing alternative better than the financing that was approved in the CON.

Rule 9413 permits that the review period for a request to amend an CON-approved project be no longer than the original review period.

TABLE 12 provides a summary of amendment requests received by the department and time required to process and issue a decision.

TABLE 12
AMENDMENTS RECEIVED AND DECISIONS ISSUED
FY2002 - FY2005

	FY2002	FY2003	FY2004	FY2005
Amendments Received	16	41	70	97
Amendment Decisions Issued	N/A	N/A	N/A	77
Issued within required time frame	N/A	N/A	N/A	54

Note: FY2002-04 not available. Tracking system to measure compliance for this Rule developed in 2005.

CERTIFICATE OF NEED ACTIVITY SUMMARY COMPARISON

Table 13 provides a comparison for various stages of the CON process.

TABLE 13 CON ACTIVITY COMPARISON FY2001 - FY2005				
	Number of Applications	% Change From Previous Year	Total Project Costs	% Change From Previous Year
Letters of Intent Submitted				
FY2001	459	N/A	\$1,564,993,008	N/A
FY2002	447	-2.6%	\$1,374,379,486	-12%
FY2003	464	+3.8%	\$2,065,537,808	+50%
FY2004	608	+31%	\$1,809,242,755	-12%
FY2005	536	-12%	\$2,171,399,994	+20%
Applications Submitted				
FY2001	247	N/A	\$1,165,903,161	N/A
FY2002	230	-7%	\$1,078,408,796	-8%
FY2003	280	+22%	\$1,224,524,464	+14%
FY2004	348	+24%	\$1,697,271,072	+39%
FY2005	302	-13%	\$1,357,978,749	-20%
Proposed Decisions Issued				
FY2001	210	N/A	\$981,894,585	N/A
FY2002	259	+23%	\$1,483,467,795	+51%
FY2003	260	+1%	\$1,061,816,408	-28%
FY2004	310	+19%	\$1,677,346,765	+58%
FY2005	292	-6%	\$1,210,837,567	-28%
Final Decisions Issued				
FY2001	198	N/A	\$986,742,730	N/A
FY2002	224	+13%	\$1,064,738,484	+8%
FY2003	270	+21%	\$1,070,176,478	+1%
FY2004	308	+14%	\$1,677,346,765	+57%
FY2005	294	-5%	\$1,204,684,463	-28%

COMPLIANCE ACTIONS

There were 298 projects requiring follow-up for FY2005 based on the Department's Monthly Follow-up/Monitoring Report as shown in **Table 14**. Further, pursuant to Rule 325.9419, one (1) compliance order was issued in FY2005.

TABLE 14 FOLLOW UP AND COMPLIANCE ACTIONS FY2001 - FY2005					
	FY2001	FY2002	FY2003	FY2004	FY2005
Projects Requiring Follow-up	169	184	327	301	298
Compliance Orders Issued	0	0	2	1	2

ANALYSIS OF CERTIFICATE OF NEED PROGRAM FEES AND COSTS

Section 20161(3) sets forth the fees to be collected for CON applications. The fees are based on total project costs and are set forth in **Table 15** below.

TABLE 15 CON APPLICATION FEES	
Total Project Costs	CON Application Fee
\$0 to 150,000	\$ 750
\$150,001 to 1,500,000	\$2,750
\$1,500,001 and above	\$4,250
New fees effective December 29, 2004.	
\$0 to 500,000	\$1,500
\$500,001 to 4,000,000	\$5,500
\$4,000,001 and above	\$8,500

Table 16 analyzes the number of applications according to which fee was assessed.

TABLE 16 NUMBER OF CON APPLICATIONS BY FEE FY2001 - FY2005					
CON Fee	FY2001	FY2002	FY2003	FY2004	FY2005
\$ 0*	2	1	5	5	10
\$ 750	64	42	67	75	21
\$2,750	61	65	71	90	13
\$4,250	120	122	137	178	37
\$1,500	N/A	N/A	N/A	N/A	54
\$5,500	N/A	N/A	N/A	N/A	119
\$8,500	N/A	N/A	N/A	N/A	48
TOTALS	247	230	280	348	302

* No CON fees are required for the following: Emergency CONs and swing beds.

Table 17 provides information on CON costs and source of funds.

TABLE 17 CON PROGRAM COST AND REVENUE SOURCES FOR FY2001 – FY2005					
	FY2001	FY2002	FY2003	FY2004	FY2005
Program Cost	\$1,399,443	\$1,578,640	\$1,482,828	\$1,274,306	\$1,287,315
Application Fees	\$731,259	\$721,650	\$776,460	\$951,146	\$1,331,409
Fees % of Costs	52%	46%	52%	75%	100%+

Source: MDCH Budget and Finance Administration.

Section 22215(6) states “If the reports received under section 22221(f) indicate that the certificate of need application fees collected under section 20161(2) have not been within 10% of 3/4 the cost to the department of implementing this part, the commission shall make recommendations regarding the revision of those fees so that the certificate of need application fees collected equal approximately 3/4 of the cost to the department of implementing this part.” The fee information for FY2005 indicates the CON program is in compliance with Section 22215(6).

CERTIFICATE OF NEED COMMISSION ACTIVITY

During FY2005, the Certificate of Need Commission revised the review standards for Nursing Home and Hospital Long-Term-Care Unit Beds, Hospital Beds, Psychiatric Beds and Services, Bone Marrow Transplantation Services, and Magnetic Resonance Imaging (MRI) Services.

The revisions to the CON Review Standards for Nursing Home and Hospital Long-Term-Care Unit Beds received final approval by the CON Commission on September 14, 2004 and were forwarded to the Governor and legislature. Neither the Governor nor the legislature took a negative action within 45 days; therefore, the revisions became effective December 3, 2004. The final language changes established a statewide pilot (four years from the effective date of the addendum) program to study the potential benefit of new designs in the new construction, renovation, and/or replacement of existing nursing home and hospital long-term-care facilities throughout Michigan. Further, the changes allowed for projects that would enhance privacy, promote greater dignity, and increase the quality of life for residents. Pilot projects shall be established according to the current bed need methodology and will not add new beds to the existing statewide inventory. In addition, language was added that will assure recent investments made by nursing home operators to improve existing facilities, within five years prior to the effective date of the addendum, are not adversely impacted by the pilot program.

Finally, the 450 gross square feet per bed maximum was removed and should allow for greater design flexibility for all new nursing homes statewide (not part of pilot program, but applicable to future nursing home development).

The revisions to the CON Review Standards for Hospital Beds received final approval by the CON Commission on March 8, 2005 and were forwarded to the Governor and legislature. Neither the Governor nor the legislature took a negative action within 45 days; therefore, the revisions became effective May 27, 2005. The final language changes were designed to improve the standards for acute care hospitals and their beds by making the modifications summarized below.

1. Respond to major shifts in population location within a subarea: define "limited access areas" as areas with significant population more than 30 minutes drive time from an acute care hospital with an emergency room. The standards have provisions regarding the number of beds for these additional hospitals and what services they shall provide.

Two areas were identified as likely meeting the criteria for "limited access areas" and thus potentially eligible for the establishment of new hospitals: 1) Alpena area, and 2) the Upper Peninsula.

Since there may be multiple applicants to start such new hospitals, six comparative review criteria were established in the standards to determine which applicants would receive the CONs for "limited access areas."

2. Make permanent the prior pilot program "high occupancy hospitals": allow those hospitals to add licensed hospital beds even in an overbedded subarea. High occupancy was defined as 80% and above for smaller hospitals (less than 300 beds) and 85% and above for larger hospitals (300 beds and above).

The revisions to the CON review standards for Psychiatric Beds and Services received final approval by the CON Commission on March 8, 2005 and were forwarded to the Governor

and legislature. Neither the Governor nor the legislature took a negative action within 45 days; therefore, the revisions became effective May 27, 2005. The final language changes reduced the average occupancy rate for adult beds from "90 percent" to "85 percent" in Section 6(2)(d) of the standards and included other technical changes.

Another set of revisions to the CON Review Standards for Psychiatric Beds and Services received final approval by the CON Commission on June 22, 2005 and were forwarded to the Governor and legislature. Neither the Governor nor the legislature took a negative action within 45 days; therefore, the revisions became effective October 17, 2005. The final language changes would allow for up to a maximum 20 beds in a Planning area that has a bed need of 1 or more but less than 20. The bed need methodology was re-ran and became effective along with the changes in the standards.

Further, the requirement that all existing adult or child/adolescent beds in a planning area must have an average occupancy rate of 85% for adults and 75% for child/adolescent would be restricted to existing facilities.

The revisions to the CON review standards for Bone Marrow Transplantation Services received final approval by the CON Commission on June 22, 2005 and were forwarded to the Governor and legislature. Neither the Governor nor the legislature took a negative action within 45 days; therefore, the revisions became effective September 21, 2005. The final language changes would allow for acquisition of an existing bone marrow transplantation service.

The revisions to the CON review standards for MRI Services received final approval by the CON Commission on June 22, 2005 and were forwarded to the Governor and legislature. Neither the Governor nor the legislature took a negative action within 45 days; therefore, the revisions became effective October 17, 2005. The final language changes would allow for those metropolitan counties (based on the 2000 census) that were previously identified as rural counties (based on the 1990 census) to receive the rural factor as calculated under Section 13(2)(a), (b), and (c) and pursuant to Section 3(4)(c)(ii) for a limited period of time. The changes would impact the November 1, 2005 MRI Service Utilization List, and applicants would have until April 1, 2006 to use the list.

CERTIFICATE OF NEED COMMISSIONERS

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